February 14, 2007

Commission's Secretary
Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: WC Docket No. 06-210
CCB/CPD 96-20

FURTHER COMMENTS REGARDING PETITIONERS REQUEST FOR RECONSIDERATION AND CLARIFICATION OF FCC ORDER OF JANUARY 12, 2007

To Whom It May Concern:

In further response to the Petitioner's February 8, 2007 reconsideration request, and to 800 Services, Inc's comments filed February 12, 2007 to have the Federal Communications Commission (FCC) revisit and/or reconsider its January 12, 2007 order, Combined Companies Inc., (CCI) and I (collectively "we") would like to supplement its initial comments on this matter with a few additional points.

First, we want to further address a point that 800 Services Inc., brought to the FCC's attention. We believe that 800 Services, Inc., restatement of AT&T's position has just as much to do with the "pre June 17th 1994 shortfall issue" as the "traffic only transfer issue" and that is why it is an "**open issue"** as AT&T asserted to District Court Judge Bassler, and therefore must be considered by the FCC as part of petitioner's Declaratory Ruling request.

Here is 800 Services Inc.'s statement.

> In petitioners case AT&T's position is that if it weren't for petitioner's right to a grandfathered restructure in April of 1995, petitioners would have had shortfall assessed against it 1995 and not 1996 as **AT&T disputed that petitioners would have made its fiscal year commitment.** According to AT&T if the petitioners April 1995 restructure was the second restructure after June 17th 1994 AT&T would have applied shortfall in April of 1995; but since AT&T didn't apply shortfall in April of 1995 AT&T had to be taking the position that the petitioners had at least one restructure to do after the Jan 1995 traffic transfer. Whether petitioners would have made its commitment at the end of its 1995 fiscal year is of no relevance given the undisputed fact that both parties have agreed that the first time petitioners restructured after June 17th 1994 was in April of 1995. That is the undisputed fact that the FCC needs to assess from that date.---- How many restructures were allowed from that April 1995 point, also taking the FCC Order into account and the first year shortfall credit._The only thing that petitioners/800 Services, Inc. and AT&T disagree on is a tariff interpretation of how long can a CSTPII be allowed to restructure under the old rules that did not require meeting monthly pro-rata commitments. Both parties agree what transpired; there are no disputed facts. It is a simple tariff interpretation.

We went back in the record and below evidence what 800 Services, Inc was referring to as AT&T's position …. that AT&T was disputing that petitioner's met their revenue commitment at the time of the traffic only transfer. Here AT&T is disputing the fact that **CCI's plans had already met their revenue commitments** prior to the transfer and thus faced no threat of shortfall charges…a key component of AT&T's FRAUD allegation against petitioner's and CCI.

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> Indeed, petitioners' claim that shortfall charges on a pre-June 1994 plan could easily be avoided through restructuring, and their **related disputed factual assertion that CCI's plans had already met their revenue commitments** prior to the transfer and thus faced no threat of shortfall charges

CCI has found AT&T's certified statements and exhibits of its Credit & Collection Manager Carl Williams to the District Court.

Carl Williams Certified Statements to District Court March 19th 1995 Page 9 para 26

> The eight Inga Plans that Inga wants to divert contain a total commitment of $**130,233,333 over the remaining life of the plans**. If the plans were to be abandoned in March, 1995, the **total termination liability would be $47, 351,666,** all of which would become unsecured debt owed to AT&T.

There are two important points from this statement above:

1) As the FCC noted in its 2003 decision the plans were not being terminated so the $47,351,666 is not even relevant. AT&T just decided to throw it in there to mislead. The remaining commitment per AT&T was $130, 233,333. Therefore this is a 3 year revenue commitment of **$43,411,111** per year.

Then Mr. Williams continues…

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> **As of March, 13th 1995**, four of the Inga plans are running below their monthly commitment levels, and four are meeting their commitments. See Exhibit D annexed to this certification which is a chart showing the start dates and the monthly commitments of each of the Inga plans together **with the average monthly billing on those plans.**

AT&T just states that four were meeting its commitments and four were not, but what it doesn't state in its certification is a accurate summary of the numbers regarding what was the total net above or below the commitment. Why didn't AT&T do this? It obvious why AT&T didn't do it, because the facts are that petitioners had already met its fiscal year commitments as of the Jan 1995 traffic only transfer. So their was NO RISK, NO FRAUD, and most certainly no tariff allowed reason why AT&T should not have processed the TSA's submitted by CCI to transfer much of its traffic to PSE for a deeper discount.

Per AT&T's Exhibit - Here's the revenue (annualized billing) that AT&T reports CCI had in March 1995.

Plan 1351: Annualized Billing: $ 4,500,000
Plan 2828 Annualized Billing: $18,360,000
Plan 1583 Annualized Billing: $ 4,510,000
Plan 3124 Annualized Billing: $ 6,720,000
Plan 2430 Annualized Billing: $ 3,240,000
Plan 3524 Annualized Billing: $ 9,360,000
Plan 2829 Annualized Billing: $ 5,160,000
Plan 3663 Annualized Billing: $ 2,280,000

Total Annualized Billing $54,130,000
Annualized Commitment $43,411,111
Over Commitment: $10,718,889 [1]

As per AT&T's Charles Fash the fiscal year was April 1st 1995 through March 31st 1996 on the plans that AT&T put into shortfall. The last two months in the April 1st 1994 through March 1995 fiscal year, of course, were February and March of 1995.

Since the traffic was being ordered to move in January 1995, for February 1995 usage this means that if petitioners did not have the traffic (assuming that AT&T had allowed the transfer as their tariff obligated them to do) for

[1] It should also be noted that AT&T's exhibit fabricated evidence. AT&T rounded all revenue numbers down to the ten thousandths place. So if a plan was doing 4,596,789 revenue per month at showed it as $4.5 million. The $96,789 X 12 months is an additional $1,161,468 not included in AT&T's numbers for each of the plans. AT&T's numbers just using an average of $50,000 in the ten thousandths place, shorted petitioners by at least $4,000,000 in revenue.

Additionally, AT&T took its already under reported monthly numbers and when extrapolating them to annual revenue further under reported the annual revenue. For example AT&T reports monthly revenue on a plan as .38 million which annualized is $4.56 million. AT&T lists it as $4.50 million. Instead of reporting the numbers accurately or at least rounding up or down AT&T just truncated all revenue downward. Another: $1.53 million was annualized as $18.31 million instead of 12 x $1.53 = $18.36 million. That is $50,000 short. There were 3 others but you get the point. AT&T displays the numbers downward, and even as it does, it still shows petitioners had already met its commitments.

the last two months of the 1995 fiscal year (February and March 1995) the $54,130,000 would be reduced by 2 months ($9,021,667 = 2 months remaining on fiscal year commitment X $4,510,833.30 average billing per month).

Therefore $54,130,000 - $9,021,667 and your revenue in 10 months is **$45,108,333.** Since the annualized commitment was $43,411,111 this means that when petitioners transferred its traffic in January 1995 it was already $1,697,222 ($45,108,333- $43,411,111) over its fiscal year commitment.

So where is the FRAUD? Quite simply, the answer to that question is there is/was no fraud. CCI's actions in seeking to move its traffic were consistent with its business agreement with petitioner; its duties and rights under the tariff; and, its desire to earn a greater discount (approximately $2,000,000 per month in additional income) on its traffic between the time after its annual commitments had been made (as illustrated above) and its need to return the traffic to its plan, if/when needed to meet its ongoing obligations to AT&T. It is clear that CCI's plan was a permissible business strategy (it certainly was not a plan to commit fraud as AT&T alleges). Rather, in fact, it is obvious that when any fair-minded review of its agreement with petitioner's is taking into consideration in evaluating CCI's actions, it reveals that CCI was hopeful that in the end, AT&T would recognize its interests would be better served by providing CCI a contract tariff of its own; or one that was

currently publicly offered (as opposed to costing AT&T an additional $2,000,000 per month in income to CCI and petitioners on the traffic CCI was transferring to PSE).

The FCC knows, as does AT&T, that while the traffic was to be temporarily "parked" on PSE's 66% plan the CSTPII/RVPP plans commitments continued to decrease – as CCI's commitments to AT&T WERE NOT monthly revenue commitments, but rather ANNUAL REVENUE commitments – in which a "true-up" would ONLY occur on each of CCI's plans fiscal year end anniversary dates .

Remember the plans had not been restructured after the June 17th 1994 grandfathered date until well after the Jan 1995 traffic only transfer. So when a restructure after the traffic only transfer date was to occur it would have, as AT&T Filed tariffs (Tariff No. 2) allowed, taken the REMAINING COMMITMENT MONTHS and cast the remaining commitment over a new three year period.

In other words even if there was $1,000 usage for the first 11 months on a CSTPII plan that had a $**43,411,111** yearly commitment, and it was restructured in the 11th month of that 1st year, under the grandfathered provision - it would have worked as follows: Take the remaining 25 months commitment and divide it over three years. So $43,411,111 X 2 years remaining + 1/12th of $43,411,111 remaining from the 1st year ='s $90,439,813 remaining commitment for the remaining 25 months in the three year contract. Now take that remaining commitment and restructure it over a

new three year period and the yearly commitment is: $30,146,604 ($90,439,813 divided by 3years)

The new yearly commitment would actually go down by $13,264,507 per year ($43,411,111-$30,146,604) despite only having $1,000 remaining on the CSTPII plans. Conversely, another way to look at it is the commitment went down by 11/36ths of the remaining commitment left on the three year plan regardless of what phone service volume was done in the first 11 months!
AT&T got an extended contract in return for a waiver of shortfall charges which are penalties for non rendered service anyway. AT&T has no real cost, as shortfall by definition is shortfall of service not provided.

And, contrary to AT&T's attempt to suggest otherwise, there is NO VOODOO SCIENCE involved here, it's simply the way the tariff worked when doing restructures. AT&T, and the FCC know this … as well as 1000's of other AT&T customers who performed similar restructures/ upgrades during the same period of time that AT&T executed its "3D Strategy: Deny, Delay, Defend" against CCI in complete and utter disregard for its duties and obligations under its tariffs and the Communications Act.

The points here are twofold:

1) AT&T's own evidence shows that at the time of the CCI traffic only transfer, petitioners had already met its fiscal year commitments. Thus AT&T's excuse that

it was not processing the traffic only transfer due to being defrauded of potential shortfall charges on plans that had already met its fiscal year commitments months ahead of time was a fraudulent excuse.

2) Additionally, as 800 Services Inc. pointed out, whether or not petitioners had already met its fiscal year commitment is totally irrelevant given the fact that petitioners still hadn't used its post June 17th 1994 restructuring privileges. When AT&T introduced Transmittal 6508 which became the June 17th 1994 grandfathering provision petitioners were one several aggregators which wrote petitions to suspend or reject. The FCC's R.L. Smith who was involved with the June 17th 1994 grandfather tariff change had stated to several aggregators that its plans would remain grandfathered after June 17th 1994 for the remainder of the 3 year contract.

Petitioners at that time restructured several contracts by June 17th 1994 and ordered them to start within the three month period to further extend the grandfathered period. Petitioners knew there was going to be an argument over how long the plans could be grandfathered. Some AT&T managers said the plans would forever be grandfathered.

The CSTPII/RVPP plans did not have to start by June 17th 1994; all they had to be is on order by that date, so petitioners utilized that strategy to extend the time

before the arguments would start; and petitioners were right that arguments would start.

Using AT&T's OWN tariff interpretation that petitioners had only one restructure remaining after the January 1995 traffic only transfer, that itself also counters AT&T's fraudulent use assertion. Understanding that petitioners needed ZERO revenue remaining on the grandfathered CSTPII/RVPP plans (as they had already made their commitments for the year), how does AT&T possibly argue it was being defrauded of shortfall when as of the January 1995 traffic only transfer, AT&T knew petitioners plans were immune from shortfall?

In closing, we once again ask that the January 12th 2007 FCC Order be revisited/clarified. And, accordingly agree to issue its interpretation on all the "open issues" requested within the petitioners Declaratory Ruling filing in September 2006 – not just the so called "transfer issue".

The FCC needs to let the public know whether the shortfall permissibility and illegal shortfall application remedy will be interpreted by the FCC as there are no disputed facts. And, if not, please explain why not.

Respectfully submitted,

_____//Signed//_____

Larry G Shipp

For: Larry G Shipp and Combined

Companies, Inc.